1988

Munns v. Munns : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MARY MUNNS, Plaintiff/Appellant, vs. LOWELL SHELLEY MUNNS, Defendant/Respondent:	No.880585-CA CATEGORY NO. 14(b)

BRIEF OF APPELLANT

APPEAL FROM THE FIRST JUDICIAL
DISTRICT COURT, BOX ELDER COUNTY
JUDGE GORDON J. LOW

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PARTIES TO THE PROCEEDINGS

Mary Munns, Plaintiff and Appellant

Lowell Shelley Munns, Defendant and Respondent

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JURISDICTION OF COURT OF APPEALS

The Utah Court of Appeals has jurisdiction to hear this appeal based on Utah Code Annotated section 78-2a-3(2)(h), which grants to the Utah Court of Appeals appellate jurisdiction over "appeals from District Court involving domestic relations cases ..."

NATURE OF THE PROCEEDINGS

This appeal is from the final findings of fact and conclusions of law and absolute decree of divorce entered by the First Judicial District Court, Box Elder County; specifically the trial court's rulings concerning failure to award attorney's fees, the amount of alimony and the length of time alimony is payable, and the amount and nature of property distribution of the assets of the marriage.

STATEMENT OF THE ISSUES

1. Did the Trial Court abuse its discretion when it failed to award plaintiff her attorney's fees from

defendant, when her only liquid assets were an award of total child support of $394.00 per month and an alimony award of $300.00 per month?

2. Did the Trial Court abuse its discretion when it awarded alimony in the amount of $300.00 per month to terminate when the plaintiff reached the age of 62, (within three years of the date of the decree), when the term of the marriage was in excess of 38 years, plaintiff has extremely limited employment skills, and the defendant has a career position paying him in excess of $27,000.00 per year?

3. Was it an abuse of discretion for the Trial Court to award all property in kind, and not require that the properties be sold and the proceeds split between the parties or used to liquidate obligations of the marriage; to award to the defendant an oversized portion of the marital property, including all assets which could quickly be converted to cash; and to allow defendant a two-year period in which to pay to plaintiff the judgment representing the offsetting value of the properties?

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES ORDINANCES, AND RULES

Utah Code Annotated Section 30-3-5(1)

Utah Code Annotated Section 78-2a-3(2)(h).

(Full text of each statute is included in the Addendum)

STATEMENT OF THE CASE

NATURE OF THE CASE

This case is an appeal from final findings of fact and conclusions of law, and an absolute decree of divorce, which adjudged the parties divorced, assigned custody of the minor children, established the amount of alimony and child support to be paid, and divided the marital property of the parties. Plaintiff appeals from the Judgment of the court concerning the issues of alimony, property distribution, and denial of attorneys fees.

COURSE OF PROCEEDINGS

1. Plaintiff filed her complaint for divorce on July 31, 1986. (R001)

2. On September 23, 1986, defendant filed his answer and counterclaim.(R019)

3. Plaintiff's reply to defendant's answer and counterclaim was filed on October 16, 1986.(R025)

4. Plaintiff's Order to Show Cause was heard by the Court on September 22, 1986. At that time the Court awarded plaintiff the custody of the minor children of the marriage; temporary use of the home, along with household furnishings in her possession and her "motor vehicle" (which motor vehicle was not specified); $400.00 per month for temporary alimony; $168.00 per month per child for child support for a total of $504.00 as temporary child support

(there being three minor children at the time of the hearing). Plaintiff was ordered to make the monthly mortgage payment on the home and pay the utilities; defendant was to make all other monthly payments to keep the parties current. (R009, 052)

5. The matter was tried to the Court on November 24, 1987. At the close of testimony on that date, plaintiff's counsel moved to continue the case. The Court granted a continuance for the purpose of obtaining testimony regarding values of property only. The Court ordered that if defendant provided information to enable plaintiff to continue her insurance coverage in the meantime, the case would be bifurcated, with the divorce decree being granted and reserving property issues for further trial.

6. By correspondence dated December 7, 1987, counsel for defendant submitted proof that plaintiff's health insurance could be carried over and continued following the entry of the divorce decree in this matter. Counsel for defendant also submitted proposed findings of fact, conclusions of law and a decree of divorce. (R131)

7. Defendant's proposed findings of fact and conclusions of law were signed by the Court and entered on January 11, 1988, as was defendant's proposed decree of divorce. (R137 et seq.)

8. On January 13, 1988, defendant gave notice to

plaintiff and her counsel of the entry of the findings of fact, conclusions of law, and decree. On January 19, 1988, counsel for plaintiff submitted an objection to the proposed findings, conclusions, and decree, and objected to the execution and entry of the same. Counsel for plaintiff also filed a Motion to vacate the proposed findings, conclusions, and decree, on the ground that the Court had never ruled on alimony, child support, or retirement. (R151, 155, 157, 159)

9. A further hearing on property values was held on June 7, 1988, following which the Court issued its Memorandum Decision on August 1, 1988. In its Memorandum Decision, the Court adopted and affirmed the provisions of the findings, conclusions, and decree which were signed on January 11, 1988, with the exception of alimony, which was adjusted to $300.00 per month. The Court further established values on the properties of the parties, and divided the property in kind, giving plaintiff a judgment against the defendant in the amount of $9,000.00, to be paid in 2 equal installments over 2 years, to balance the property division. Following the court's memorandum decision, counsel for plaintiff prepared final findings of fact and conclusions of law and an absolute decree of divorce as ordered by the Court from the provisions in defendant's proposed findings, conclusions and decree and the memorandum decision issued by the Court. The Court executed the findings, conclusions,

and decree on September 8, 1988, on which date they were entered by the Court. (R213-232)

10. On October 11, 1988, following a legal holiday the preceding day, plaintiff, through her new counsel, filed her Notice of Appeal, and filed her bond for costs on appeal. Plaintiff/Appellant's Docketing Statement was filed on November 1, 1988.

DISPOSITION AT TRIAL COURT

The ruling of the trial court was as follows:

1. Each party was granted a divorce from the other on the grounds of irreconcilable differences. (R140, 145, 229)

2. Plaintiff was granted custody of the two children who were still minors at the time of the Decree of Divorce. Based on the defendant's income, child support was established at $197.00 per month per child. (R 138, 139, 140, 145, 221, 224, 230)

3. Defendant was employed full time at Morton Thiokol with an hourly wage of $13.90 per hour. ((R138)

4. Plaintiff has not worked outside the home during the marriage but is capable of employment and had worked part time for the school district at approximately $3.50 per hour. (R138, 221)

5. Defendant was ordered to provide health and accident insurance for the minor children of the marriage,

and continue life insurance on his life naming the minor children of the parties his beneficiaries; each party would be responsible for 1/2 of all medical expenses not covered by insurance; defendant was also ordered to cooperate in assisting plaintiff to retain her health and accident insurance through his employer through COBRA provisions. (R140, 141, 145, 1146, 221, 224, 230)

6. The defendant had accumulated approximately 14 years credit in the Morton Thiokol pension plan during the course of the marriage, which the Court apportioned one-half to each party. (R139, 221, 225, 231)

7. The Court found that each of the parties had received some inheritance during the course of the marriage, but each inheritance had been expended or co-mingled with other marital assets and was unidentifiable. Therefore, the Court made no distribution of inheritance receipts to either party. (R 142, 222, 226, 232)

8. The Court found that the plaintiff had incurred attorney's fees of approximately $1,700.00, a portion of which was paid from joint funds which were accrued during the marriage. The Court also determined that the defendant had incurred attorney's fees in excess of $2,000.00 in settlement negotiations, discovery, trial preparation and trial. The Court ordered each party to pay his or her own costs and attorney fees. (R 139, 142, 147,

226, 233)

9. The Court established the values of the marital assets as follows:

(a) The family home and lot, plus the lot east of the house, a total of 1.7 acres - $30,000.00 (mortgage of $3,162.00 equals net equity of $26,388.00). (b) Mobile home and lot in Bear River City - $26,000.00. (c) Building lot - $11,000.00 (amount it sold for). (11/24/87 a.m. Trans. p.6) (d) Farm - $95,500.00 (mortgage of $46,953.00 yields net equity of $48,547.00). (e) Vehicles and machinery (exclusive of Chevrolet and Oldsmobile) (less outstanding loans) - $23,859.00. (f) Junk and scrap metal - $10,000.00. (g) Household furnishings - $3,000.00. (h) Horses and livestock - $4,000.00. (i) Savings account - $3,200.00. (j) Chevrolet and Oldsmobile - $850.00. (R 215, 222-223)

10. The Court set alimony at $300.00 per month based on "the debts, the duration of payment, duration of the marriage, plaintiff's lack of work experience and employment skills, recognizing the ages of the children, the eventual receipt of social security and retirement benefits together with income realized from the properties". The Court ordered that defendant's obligation to pay alimony would end after the death of either party; would terminate upon remarriage of the plaintiff or cohabitation; would in any event terminate upon the plaintiff's 62nd birthday and

her eligibility to begin receiving Social Security payments. (R141, 146, 215, 223, 225, 231)

11. The Court awarded to plaintiff the following property: the family home subject to the mortgage, mobile home and lot, building lot, Chevrolet and Oldsmobile, household furnishings, savings account and $9,000.00 judgment against defendant to equalize distribution. (R 216-217, 226, 232)

12. Defendant was awarded the farm property subject to the mortgage; the vehicles and machinery subject to the debts, including the Bronco subject to the debt owed on it; junk and scrap; horses and livestock. Defendant was ordered to pay to plaintiff $4,500.00 within 12 months of the date of the findings and conclusions and decree, and the balance of $4,500.00 within one year thereafter. (R 216, 217, 226, 232)

13. Defendant was ordered to assume and discharge all debts and obligations of the parties with the exception of the mortgage on the family home. (R 217, 226, 233)

STATEMENT OF FACTS

1. The parties to this appeal were married at Logan, Utah on June 2, 1950; they had been married for 38 years at the time the Decree of Divorce was entered. Twelve children were born of the marriage, of whom eleven are still

living. Three children were minors at the time the divorce was filed; two of the children are still minors, and are in the custody of the plaintiff. (R 002, 020, 138, 221 9/22/86 p. 4, 11/24/87 a.m. p. 12-13)

2. Plaintiff was 57 years old at the initial hearing in 1986; by the time of trial she was 58 1/2 years old. (9/22/86 trans. p. 12, 11/24/87 a.m. trans. p. 84)

3. Plaintiff has developed no marketable skills during the course of the marriage, and has not worked outside of the home during the marriage. (9/22/86 p.4, 11/24/87 a.m. p. 15-16)

4. Since the beginning of divorce proceedings, plaintiff has been unable to obtain full time or even regular part time employment outside of the home, although she took a computer class, and applied for employment at Job Service, the school district, and several other places. The only employment she has obtained during the course of the proceedings was a substitute position in the school lunch program at a local junior high, which was only 3 to 4 hours per day when available. She has no expectation of being able to obtain a permanent job with the school lunch program. (R 138, 11/24/87 a.m. p. 101-102)

5. Plaintiff has had a problem with her hands being numb, which required surgery; she has also had an ulcer since approximately 1981. Plaintiff suffers from some

loss of hearing, for which she is receiving medical treatment. She has moderate hearing loss in one ear, and severe hearing loss in the other ear, which requires that she wear a hearing aid in each ear. Each hearing aid must be replaced every five to seven years, and new ear mouldings must be made at the same time. Her hearing aids cost approximately $500.00, and batteries cost $3.00 to $4.00 for a battery pack which will last two weeks for each hearing aid. (9/22/86 trans. p. 3, 11/24/87 a.m. p. 49, 11/24/87 a.m. p. 77 - 80.)

6. Defendant is employed full time by Morton Thiokol. He has worked for this same company for over 14 years. At the time the proceedings were begun, his hourly wage was $13.20 per hour; by the time of the final hearing, his income had risen to $13.97 per hour. During many years, he worked substantial over time. His 1987 total income, as evidenced by his tax returns, was $38,669.00. In 1986 his taxable income was $36,000.00; in 1985, it was $35,000.00. (R 138, 221, 11/24/87 a.m p.70, 11/24/87 p.m. p. 114, 133; 6/7/88 trans. p. 2)

7. Defendant is also self-employed in agriculture. His farm income for the total calendar year 1985 was $7,000.00; his farm income for 1986 through September of that year was approximately $4,000.00; he did not provide to the plaintiff information concerning his farm

income for subsequent years. (R 062)

8. Throughout the course of the marriage, defendant has continually acquired scrap metal, damaged or inoperable farm equipment, vehicles etc. which plaintiff generally describes throughout the proceedings as "junk". Based on receipts obtained by plaintiff, defendant purchased in excess of $21,000.00 in scrap metal from Morton Thiokol alone. (6/7/88 trans. p. 22-23, 6/7/88 ex. 1 p. 10)

9. Plaintiff estimated her total monthly expenses in 1986 to be $1,190.00 per month. By the time of trial in November, 1987, plaintiff's expenses were $1,350.00 per month; even without the house payment, plaintiff would need a minimum of $1,090.00 income to meet her current expenditures. (R 014; 11/24/87 a.m. trans. p. 96-99)

10. Plaintiff had incurred $1,700.00 attorney's fees through the time of trial, exclusive of court costs. With the additional hearing on June 7, 1988, plaintiff's attorney's fees totaled $2,000.00 plus costs. By the time of the final hearing, plaintiff had paid $475.00 in attorney's fees, leaving a balance of $1,525.00 plus court costs still owing to her counsel. (11/24/87 a.m. trans. p. 83, 1/24/87 p.m. trans. p. 92; 6/7/88 p. 38-39

11. By the date of trial, plaintiff's liquid assets had been reduced to a savings account with $100.00 to $200.00 in it, and a checking account with just in excess of

$300.00 (the minimum balance for that account). She had used the balance of her savings to pay bills. Defendant too had used some of his savings to pay bills, but still had his regular income from Morton Thiokol. (11/24/87 a.m. trans. p. 83 - 84, 100-101, 11/24/87 p.m. trans. p. 134)

12. Plaintiff inherited $11,336.90 in cash from her father, $3,000.00 at a rate of $1,000.00 per year for 3 years prior to the death of plaintiff's father, $8,336.90 following his death. (R -107, 108; 11/24/87 a.m. trans. p. 58)

13. Each time plaintiff received funds from her father or his estate, defendant requested to borrow the funds she had received in order to make payments which were due on various obligations, promising her that he would repay the funds with interest. Defendant has failed to repay any of the funds at any time, or to pay to plaintiff any interest. (11/24/87 a.m. trans. p. 59 - 60, 64, 67 - 68)

14. Defendant inherited approximately 9 acres of property from his family. At the time of trial, the parties owned an unrecorded interest in 1 acre, which they had sold on contract for $11,000.00. The balance of the property had previously been sold by the defendant, and the proceeds used to purchase "junk", scrap metal and various implements and/or equipment which, by the time of the trial, generally

were inoperable and worthless except for their scrap value. (11/24/87 p.m. trans. p. 103 - 104, 11/24/87 a.m. trans. p. 90)

15. During the marriage the parties acquired a homestead at Elwood, consisting of a house on .82 acres, with an adjacent unimproved lot of .79 acres. This property was purchased from the defendant's father during the marriage, but not inherited. (R. 075, 11/24/87 a.m. trans. p. 89) The home is in poor to very poor condition, needing the following repairs: new carpets, new linoleum, replace the cabinets, paint the interior and exterior of the home, repair water damaged floor and window in kitchen, new sink and stove, new siding and shingles on exterior. (11/24/87 p.m. trans. p. 10; 6/7/88 trans. p 12 -13; 6/7/88 ex. 1 p. 7) Plaintiff's appraiser estimated repair costs to the exterior would amount to $4,688.00, while interior repair costs would amount to $6,943.00. (6/7/88 ex. 1 p. 7) The home was appraised at $23,000.00 by plaintiff's expert, Reed Willis. (6/7/88 ex. 1 p. 18) Defendant's expert, Troy Miller, a real estate broker, valued the Elwood house and property on the single lot of .82 acre at $32,000.00. Defendant valued the extra lot separately at $6,000.00. (11/24/87 p.m. trans. p. 6-7) At that same date, the Box Elder County Assessor's fair market value figure given for the home and both lots was $21,536.00. Defendant's expert

testified the assessor's valuation was usually 70% of the resale value of the property.

16. The parties also own a 1/2 acre lot with a double wide mobile home on it in Bear River City, Utah. Plaintiff's expert valued this lot and home at $23,500.00, stating that the roof and windows have water leaks and the carpets were only in fair condition. He estimated cost for repairs to bring the mobile home up to sale condition would be $1,900.00. (6/7/88 ex. 1, p 8, 18-19) Defendant's expert valued the same property at $26,000.00. (11/24/87 p.m. trans. p. 7, 15) The parties had previously sold this parcel on contract for $24,000.00 plus a motorhome of unspecified value, with payments at the rate of $250.00 per month. However, the buyers had defaulted and it has been necessary for the parties to retake this property and resell it. (9/22/86 trans. p. 20)

17. The parties own 2 parcels of agricultural property, of 154 acres and 148.6 acres respectively. The property has been used as pasturage by the defendant for many years, for his own livestock and that of others. The grass, when cut, also generates income for the parties. (11/24/87 p.m. trans. p. 160 - 161) Defendant has the right to use water associated with the property, but does not actually own water shares for the property; cost to him to purchase such shares would be $9,810.00, and he would have

to purchase such shares before he could sell the property. (6/7/88 trans. p. 20, 6/7/88 ex. 1 p. 10) Plaintiff's expert, Reed Willis, valued this farm property at $122,500.00 less the amount required to buy the water shares, for a net value of the farm property of $112,690.00. (6/7/88 trans. p. 20) Defendant valued the entire parcel of agricultural property at $250.00 per acre, yielding a value for both parcels of just over $75,000.00. (11/24/87 p.m. trans. p. 96- 97) Defendant's valuation was based on purchases by Carl Hansen and Curtis Christensen of parcels next to the Munns properties. Id. Both purchases were from the Federal Land Bank, of properties under foreclosure, and were made by sealed bid rather that a hands off-market sale. (11/24/87 trans. pp. 50 - 52, 65 - 67)

18. Defendant claimed that all the household furniture and furnishings together were worth $5,000.00. (11/24/87 p.m. trans. p. 105) Plaintiff stated that most of the furniture in the home was in "lousy" condition, and that her intention was to give it away. Most of the furniture was second-hand. She valued the furniture at $100.00. Some individual appliances which she had replaced were valued separately: the washer, the refrigerator, the microwave. All other appliances she valued as worthless. (11/24/87 a.m. trans. p.p. 52-53) Plaintiff's expert, Reed Willis, in his appraisal (6/7/88 ex. 1 p. 7) stated "the

furniture was in poor condition and would have no garage sale value except for a 1982 refrigerator and 1980 microwave oven". He valued the entire household furnishings at $390.00.

19. The assets of the parties acquired during the marriage also include vehicles and machinery, junk and scrap metal, horses and livestock, savings account, Chevrolet, Oldsmobile, and Bronco. (R 002, 003)

SUMMARY OF THE ARGUMENT

1. The attorney's fees incurred by the plaintiff were reasonable for the case, and for the time invested in the case. The evidence shows that plaintiff was in need of assistance in order to pay her attorney's fees. Therefore, it was an abuse of discretion for the trial court to refuse to award plaintiff any of her attorney's fees.

2. The amount of alimony awarded to plaintiff is insufficient to meet her ongoing expenses, considering her lack of income from any other source, and her inability to produce income. Defendant clearly has the ability to pay support to the plaintiff in an amount greater than that awarded. It was an abuse of discretion for the trial court to order that alimony would terminate completely when plaintiff reached age 62, without any consideration of the needs of the plaintiff following that time, or the ability of the defendant to provide continued support.

3. The trial court abused its discretion in allocating all property in kind, leaving the parties, and especially the plaintiff, in a cash-poor situation. The extreme difficulty in valuing the assets of the marriage resulted in an inequitable distribution of assets, awarding to defendant the majority of the assets which were readily convertible to cash. Allowing the defendant a two-year period in which to pay plaintiff the offsetting value of the marital assets leaves plaintiff in a financially vulnerable position, while there is no evidence to show that defendant was unable to pay the award at a faster rate.

DETAIL OF THE ARGUMENT

I.

DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT FAILED TO AWARD PLAINTIFF HER ATTORNEY'S FEES FROM DEFENDANT, WHEN HER ONLY LIQUID ASSETS WERE AN AWARD OF TOTAL CHILD SUPPORT OF $394.00 PER MONTH AND AN ALIMONY AWARD OF $300.00 PER MONTH?

Plaintiff in this proceeding requested that the defendant be ordered to pay her reasonable attorney's fees and costs in prosecuting this action. The decision to make an award of attorney's fees traditionally rests within the sound discretion of the trial court. Kerr v. Kerr, 610 P.2d 1380 (Utah 1980). Any award of attorney's fees must be based on both evidence of need and reasonableness of the

fees awarded. Kerr v. Kerr, supra; Beals v. Beals, 682 P.2d 862 (Utah 1984); Huck v. Huck, 734 P.2d 417 (Utah 1986); Rasband v. Rasband, 752 P.2d 1331 (Utah App. 1988); Porco v. Porco, 752 P.2d 365 (Utah App. 1988); Maughan v. Maughan, 102 Utah Adv. Rep. 44 (Ct. App. Feb. 22, 1989). The reasonableness of the fee to be awarded involves several factors, including the necessity of the number of hours dedicated to the case, the reasonableness of the rate charged by the attorney in light of the difficulty of the case and the result accomplished, and the rate commonly charged for divorce actions in the community.

In the case at hand, counsel for plaintiff proffered testimony during the trial on November 24, 1987 that a reasonable fee for services to that date would be $1,700.00 plus costs. (Tr. 11-24-87 - afternoon session, page 92). Counsel for defendant stipulated "that for the work done that is a reasonable amount". The testimony proffered by counsel for plaintiff at the subsequent hearing on June 7, 1988 (Tr. pages 38-39) indicated that plaintiff's attorney fees through that hearing were $2,000.00 plus costs, of which the plaintiff had paid only $475.00, leaving a balance owing on her attorney's fees of $1,525.00.

The record is replete with evidence that the plaintiff is in dire need of financial assistance with her attorney's fees. She has no income other than the funds

received from the defendant for alimony and child support. She has no marketable skills and has not been employed outside the home since the marriage in 1950, except for a substitute, part-time position with the school district in the school lunch program at the minimal wage of $3.50 per hour. Plaintiff has no liquid assets, and the income available to her from defendant is barely enough to cover her living expenses and those of her minor children. Therefore, this case is very similar to Huck v. Huck, supra. In Huck, the court's award of partial attorney's fees to Mrs. Huck was upheld on the basis that she had no liquid assets and her income barely covered her expenses. (Since Mrs. Huck did not cross-appeal the partial award of attorney's fees, the court did not go on to consider whether she should have received her entire attorney's fees.)

In the case at hand, the trial court gave no indication as to its exact reason for denying plaintiff any award of attorney's fees, other than to state that part of plaintiff's attorney's fees had been paid out of a joint bank account of the parties. However, this left a substantial balance owing to plaintiff's atttorney, and plaintiff has no source of funds with which to pay her attorney's fees. Defendant, on the other hand, has a steady source of income through his employment at Morton Thiokol. The fact that defendant had incurred attorney's fees in

excess of those incurred by plaintiff is irrelevant to the issue of whether plaintiff should be awarded attorney's fees; if anything, that fact merely goes to support the reasonableness of plaintiff's attorney fee claim. Defendant's counsel stipulated that the attorney fee claim by plaintiff was in fact reasonable for the work done in this case. Therefore, it was an abuse of discretion for the trial court to fail to award to plaintiff her attorney's fees and costs incurred in prosecuting this action.

II.

DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT AWARDED ALIMONY IN THE AMOUNT OF $300.00 PER MONTH TO TERMINATE WHEN THE PLAINTIFF REACHED THE AGE OF 62, (WITHIN THREE YEARS OF THE DATE OF THE DECREE), WHEN THE TERM OF THE MARRIAGE WAS IN EXCESS OF 38 YEARS, PLAINTIFF HAS EXTREMELY LIMITED EMPLOYMENT SKILLS, AND THE DEFENDANT HAS A CAREER POSITION PAYING HIM IN EXCESS OF $27,000.00 PER YEAR?

The purpose of alimony, as stated by both the Utah Supreme Court and the Utah Court of Appeals, is to "enable the receiving spouse to maintain as nearly as possible the standard of living enjoyed during the marriage and to prevent the spouse from becoming a public charge." Paffel v. Paffel, 732 P.2d 96, 100 (Utah 1986); Jones v. Jones, 700 P.2d 1072, 1075 (Utah 1985); Naranjo v. Naranjo, 751 P.2d 1144, 1146 (Utah App. 1988). Thus, the purpose of alimony goes beyond mere support of the spouse at the poverty level.

Rather, it should "to the extent possible, equalize the parties' respective standards of living and maintain them at a level as close as possible to the standard of living enjoyed during the marriage." Gardner v. Gardner, 748 P.2d 1076, 1081 (Utah 1988); Olson v. Olson, 704 P.2d 564, 566 (Utah 1985); Jones v. Jones, supra; Higley v. Higley, 676 P.2d 379, 381 (Utah 1983); Naranjo v. Naranjo, supra.

In September, 1986, plaintiff's evidence was that her monthly expenses were $1,190.00. At that time, the Court awarded her $400.00 per month as temporary alimony, and temporary child support of $168.00 per month for each of the three minor children giving her a total temporary award of $904.00 per month. By the time of trial, plaintiff's monthly expenses were $1,350.00 per month, including her house payment of $259.00 per month. Between the time temporary alimony was initially set and the time of trial, one child had reached age 18, and plaintiff no longer received child support for him. However, her household expenses did not decrease as much as her income did when child support for that child was eliminated. The nature of many of plaintiff's household expenses is such that the amount required for those expenditures remains the same, whether they are made solely in behalf of plaintiff; in behalf of plaintiff and two minor children; or in behalf of plaintiff and three minor children.

During that same period of time, September 1986 to September 1988, defendant's income rose from $13.20 per hour to $13.97 per hour. However, the trial court, when it entered its final award of alimony, reduced the alimony from $400.00 per month to $300.00 per month, at a time when defendant's income had clearly increased and when child support previously received was being cut off as the children reached 18.

A. Amount of Alimony Awarded.

Analysis of an alimony award to determine whether it is reasonable involves three factors: 1) The financial condition and need of the party seeking alimony; 2) the ability of the party seeking alimony to produce income; and 3) the ability of the other party to pay support. English v. English, 565 P.2d 409, 411-412 (Utah 1977); Jones v. Jones, supra; Olson v. Olson, supra; Paffel v. Paffel, supra; Gardner v. Gardner, supra; Naranjo v. Naranjo, supra. If the trial court has considered those three factors in making its alimony award, this court has stated that it will not disturb the award of the trial court unless "such a serious inequity has resulted as to manifest a clear abuse of discretion." English v. English, 565 P.2d 409, 410; Martinez v. Martinez, 754 P.2d 69, 74 (Utah App. 1988). A review of the evidence in light of those three factors, however, shows that there is a serious inequity in the

alimony award entered by the trial court below.

1. Plaintiff's Financial Condition and Needs.

The substance of plaintiff's testimony at trial was that her monthly expenses, exclusive of her house payment, were $1,090.00. Her house payment added $259.00 per month to this figure. The Court awarded her $300.00 per month alimony, scarcely enough to pay the house payment. Between the time the divorce was entered and the time this brief was filed, the loan on the home was paid off. Even without the house payment, though, $300.00 per month is clearly inadequate to pay plaintiff's utilities, insurance, car expense, and her own personal expenses.

Although the house payment has now been eliminated, the plaintiff still cannot support herself on the amount of alimony awarded. The Bear River property awarded to plaintiff is not currently producing income, and there is no finding concerning the amount of income it can be expected to produce on a regular basis. Even if the Court assumes that it can regularly produce $250.00 per month, as there was some evidence to indicate, plaintiff's income still falls short of meeting her expenses at this level of alimony. $300.00 alimony per month, with $197.00 per child as child support, and $250.00 potential income from rental on the Bear River property, simply does not add up to the $1,090.00 required to meet plaintiff's current

expenses. Plaintiff should not be required to exhaust her capital assets to meet her current expenses (especially where those current expenses do not include payments for other capital assets). It is unlikely that she will be able to sell the Bear River property and convert the entire amount to cash. If she is able to sell it at all, she will have to sell it on contract, and she will not be able to get payments much in excess of $250.00 per month.

Additionally, the testimony clearly shows that the home is in very poor condition and needs major repairs. Although there was evidence that repairing the home would cost approximately $11,600.00, the court did not provide to plaintiff any source of income to pay for those repairs. Plaintiff is not asking for sufficient funds to live in the lap of luxury. The parties have lived in a very small home (928 square feet on the main floor, and 464 square feet in the basement) for approximately 30 years. During that time, they have raised 11 children in that home. The effective age of the home according to the appraiser, is about 60 years. (6-11-88, ex. 1 p. 7) Given these factors, it is understandable that the home needs major repairs, and plaintiff needs some source of income with which to effect repairs.

2. The Ability of the Party Seeking Alimony to Produce a Sufficient Income for Herself.

The trial court in this case awarded to the plaintiff $300.00 per month as alimony, apparently intending that this amount could be supplemented by child support, and by income from another parcel of property of the parties which was awarded to the plaintiff.

Plaintiff was awarded a double wide mobile home and lot in Bear River City, in which the parties were not living. They had previously sold this property on contract, but the buyers have defaulted. Even if the property can be rented for $250.00 to $300.00 per month, plaintiff does not have funds to make repairs necessary on the property (her appraiser estimated those repairs would cost approximately $1,900.00). The property has been listed for sale, but the best offer received since the decree of divorce was only $15,900.00. None of the other properties awarded to the plaintiff are income producing properties.

Plaintiff is close to 60 years of age. Since 1950 when the parties were married, she has been a housewife and mother, but has not worked outside the home. She has developed no marketable skills. She lives in a rural area where jobs are scarce, especially for those without training and experience. Although she has tried to obtain some job training and has applied for jobs throughout the area, the only employment she has had since the beginning of divorce proceedings has been substitute in the school lunch program

in the local middle school. This job is only part time, and she has only been able to work at irregular times. She has no immediate prospects of being hired on a regular basis for this job. "It is entirely unrealistic to assume that a woman in her mid-50's with no substantial work experience or training will be able to enter the job market and support herself in anything even resembling the style in which the couple had been living." Jones, 700 P.2d 1072, 1075; Naranjo, 751 P.2d 1144, 1147. It is unrealistic to expect that plaintiff will be able to become employed at such a wage level that she can make up the difference between her income and her expenses. While the Court did not state that it was assuming she would become employed, nor did the court set a level at which it expected her to produce income, that seems to be the result of the court's ruling.

Plaintiff has no prospect of being able to produce income sufficient to meet her current expenses, much less sufficient to enable her to make necessary repairs to her own home. In the case of Gardner v. Gardner, supra, the Utah Supreme Court reversed and remanded an alimony award for specific findings concerning the wife's ability to support herself. In that case, the trial court had awarded the wife $1,200.00 per month as alimony, although there was evidence that her monthly needs were $1,700.00 per month. Mrs. Gardner had not been gainfully employed since 1958, and

the court gave no indication as to the basis for its award of $1,200.00 per month alimony. Since her future earning potential was nil, and her current monthly expenses exceeded the alimony award, the court considered that the award was insufficient to equalize the standards of living of the parties.

Likewise, in this case, the court gave no specific monetary basis for its award of alimony. The court did not specify what amount of income, if any, was projected to be produced by the properties; nor did the court state whether it was assuming that plaintiff would be able to obtain some form of employment, and if so, at what wage. Without specific information from the court concerning the anticipated sources of income to the plaintiff, she will not in the future be able to show a substantial change in circumstances in order to modify the alimony award. Findings of the court concerning the plaintiff's ability to produce income for herself are inadequate.

In the case of Higley v. Higley, supra, the trial court awarded to the wife $100.00 per month as permanent alimony. Higley involved a 30 year marriage, where the wife was 47 years of age, in poor physical health, and with no employment training or experience other that "a few sporadic, seasonal, unskilled jobs." The level of alimony awarded in Higley was clearly not sufficient to allow the

wife to enjoy a standard of living anywhere near that which she had enjoyed during the marriage or near the standard of living the husband would enjoy following the divorce. The court noted that the alimony was so low she could be forced to resort to public assistance, which would fail to meet the most important purpose of alimony, to prevent the spouse from becoming a public charge. Likewise, if the plaintiff does not have the ability to produce sufficient income to supplement the permanent alimony award to a level whch will meet her reasonable expenses, this court must reverse and remand to the trial court for entry of an award of permanent alimony at a level sufficient to enable her to pay her monthly obligations.

3. The Ability of the Other Spouse to Pay Support.

Obviously, the court must take into account in establishing alimony the ability of the paying spouse to provide support. However, the evidence does not support the trial court's findings in this area. By the time of the final hearing on this case, the defendant was earning $13.97 per hour at his full time employment at Morton Thiokol, yielding a gross income per month from that job alone of $2,402.84. Defendant was able to work overtime at the job, and has frequently done so in the past. The defendant also has income from the agricultural properties of the parties,

which can offset a portion of his payments. During the course of the proceedigns, defendant's income rose, while his expenses for child support decreased. He has since paid off his Bronco, further reducing his expenses.

Plaintiff throughout these proceedings has requested alimony of $850.00 per month. She feels that this amount is sufficient to enable her to meet her regular expenditures, and maintain the lifestyle she had prior to the divorce. Awarding plaintiff $850.00 per month as alimony would very nearly equalize the parties' standard of living. While defendant's debt load is heavy, he also received numerous items of property in the divorce which could be used to generate income to reduce his debt load. If he chooses to retain those assets instead of converting them to cash, he cannot be heard to complain concering his heavy debt load, and the plaintiff should not be penalized for his unwillingness to convert assets to reduce his own payments. In Naranjo, this court upheld an alimony award of $800.00 to a 59-year-old wife who had worked as a full time homemaker for 16 years. That alimony award was slightly more than 1/3 of the husband's monthly income, and was not considered an unreasonable distribution. In support of that award, the Court stated "where a marriage is of long duration and the earning capacity greatly exceeds that of the other ... it is appropriate to order alimony ... at a

level which will insure that the supported spouse ... may maintain a standard of living not unduly disproportionate to that which she would have enjoyed had the marriage continued." Naranjo, 751 P.2d 1144, 1147, quoting Savage v. Savage, 658 P.2d 1201, 1205 (Utah 1983).

Based on an analysis of the three factors involved in alimony, the trial court's award of $300.00 is clearly inadequate, and is an abuse of discretion. It fails to meet the stated purpose of alimony, in that it does not provide plaintiff with a level of income sufficient to maintain her standard of living. It is questionable whether it provides her with a level of income sufficient to keep her from becoming a public charge. Plaintiff's expenses clearly exceed the amount awarded to her by the court and any amount she has a reasonable expectation of producing as income. Defendant's current income on the other hand, is clearly adequate to support her at the level she originally requested. The court's award of permanent alimony, which fails under any of the articulated standards, and fails the standard as a whole, is so clearly inadequate as to constitute an abuse of discretion, and the award must be increased.

B. Alimony should not terminate at age 62.

The trial court's order regarding alimony contained the usual provisions concerning termination of

alimony on the death of either party, remarriage of plaintiff, or her cohabitation with a member of the opposite sex. However, the Court went further, stating "said obligation in any event shall terminate upon the plaintiff's 62nd birthday and her eligibility to begin receiving Social Security payments." (R. page 141, 146, 225, and 231) There is no indication in the record, however, as to how much the plaintiff may expect to receive in the way of Social Security payments. An estimate obtained by plaintiff shows that she can expect to receive only $204.00 per month as Social Security payments. (A copy of this estimate is included in the Addendum) There is also no independent analysis of this post-retirement alimony figure in light of the Jones factors: specifically, there is no indication that the plaintiff's expenses will drop, that her financial condition and needs will improve, or that her ability to produce income will improve. The Court took no step to protect the plaintiff should her income from Social Security be less than the amount of alimony she was awarded; nor did the court attempt to provide for a balancing of plaintiff's needs versus her income from Social Security in the future.

Further, the court failed to tie any potential reduction in the plaintiff's income to an actual reduction in defendant's income. If defendant does not retire at age 62, his income will not change, and there is no reason why

her income should drop if his does not.

Even after retirement, the purpose of alimony is still to equalize the parties' standard of living. The case of Gardner v. Gardner, supra, is substantially similar on this point. In that case, the trial court cut alimony in half effective with the date of the husband's retirement. The trial court did not assess this cut in light of the wife's needs following retirement, nor in light of the husband's income following retirement. It was clear that the award of the trial court would be insufficient to equalize the standard of living for the parties following Dr. Gardner's retirement, and the case was reversed and remanded. The court in Gardner noted the likelihood of the wife's providing for her own retirement was small. She had no independent pension and would not qualify for social security only as an ex-wife married for the requisite number of years. Accordingly, the Supreme Court required the trial court to enter explicit findings concerning whether the wife would be able to meet her monthly needs with that award of post-retirement alimony.

Likewise, there is no evidence in the case at bar to show that the plaintiff will be able to meet her needs after she reaches the age of 62. Mrs. Munns's expenses are not expected to go down merely because she reaches the age of 62; the Court took no action to insure that her income

would remain at a level sufficient to meet her ongoing expenses.

The provision of the Court's award terminating alimony at age 62 when plaintiff is eligible to receive Social Security benefits should be reversed, and the case remanded to the trial court with instructions to strike the provision altogether. Alternatively, the order should be reversed and the case remanded to the trial court for entry of an order sufficient to preserve Mrs. Munns' income following age 62 at a level which will still enable her to meet her ongoing expenses, and to equalize the standard of living of the parties following defendant's retirement.

III.

WAS IT AN ABUSE OF DISCRETION FOR THE COURT TO AWARD ALL PROPERTY IN KIND, AND NOT REQUIRE THAT THE PROPERTIES BE SOLD AND THE PROCEEDS SPLIT BETWEEN THE PARTIES OR USED TO LIQUIDATE OBLIGATIONS OF THE MARRIAGE; TO AWARD TO THE DEFENDANT AN OVERSIZED PORTION OF THE MARITAL PROPERTY, INCLUDING ALL ASSETS WHICH COULD QUICKLY BE CONVERTED TO CASH; AND TO ALLOW DEFENDANT A TWO-YEAR PERIOD IN WHICH TO PAY TO PLAINTIFF THE JUDGMENT REPRESENTING THE OFFSETTING VALUE OF THE PROPERTIES?

Utah Code Annotated Section 30-3-5(1) states, in part, "...when a decree of divorce is rendered, the Court may include in it equitable orders relating to the children, property, and parties."

This Court has stated that "the purpose of property divisions is to allocate property in the manner which best serves the needs of the parties and best permits them to pursue their separate lives." Noble v. Noble, 761 P.2d 1369, 1373 (Utah App. 1988), citing Burke v. Burke, 733 P.2d 133, 135 (Utah 1987); Jones v. Jones, 700 P.2d 1072, 1074-1075 (Utah 1985). The Court in Noble went on to state, "the overarching aim of a property division, and of the decree of which it and the alimony award are subsidiary parts, is to achieve a fair, just, and equitable result between the parties." Noble, 761 P.2d 1369, 1373. Both statute and case law refer repeatedly to "equitable orders", not to equal orders. The trial court, therefore, has considerable discretion in apportioning property and debts among the parties to a divorce. The decisions of the trial court will only be overturned on appeal if "... there was a misunderstanding or misapplication of the law resulting in substantial or prejudicial error; or the evidence clearly preponderated against the findings; or such a serious inequity has resulted as to manifest a clear abuse of discretion." English v. English, 565 P.2d 409, 410 (Utah 1977) Accord, MacDonald v. MacDonald, 236 P.2d 1066, 120 Utah 573 (1951); Naranjo v. Naranjo, supra. The Utah Supreme Court has also stated that the duty of the trial court is to "make a distribution of property and income so

that the parties may readjust their lives to their new circumstances as well as possible." Gardner v. Gardner, 748 P.2d 1076, 1078. Obviously, in order to meet this goal, the trial court must have considerable flexibility in its distributions.

The trial court in this case has carefully crafted a property distribution plan which appears to benefit the parties equally. However, the court's careful plan, especially when viewed in conjunction with its alimony award, allows the defendant to readjust his life to his new circumstances with scarcely a change. He continues to have his income from his job; he has all the property and items he needs to maintain his part-time avocation in farming; he even retains the scrap metal, junk cars, farm implements, etc. that he has collected throughout the marriage at the expense of his family's comfort.

The plaintiff, on the other hand, is left with the home in which she has been residing (a home in need of extensive repair), and an additional residential property for which she has no use and for which she can not obtain the appraised value at a market sale. She must either sell this property at a loss, given the valuation placed on it by the court, or she must maintain it as rental property and become a permanent landlord. To maintain both these properties, she has very little income, not enough to

maintain her own current expenses, much less make capital repairs. She has almost no income, and no options; she must eke out an existence where she is surrounded by reminders of this failed marriage. Defendant, having had the services of the plaintiff for over 35 years, having resided with plaintiff and their eleven children in the same very small house for over thirty years, now walks away from the marriage with everthing he asked, his only obligations being the child support established by the schedule in effect in the trial court at the time of the divorce trial, and a meager alimony obligation.

This court has articulated several factors which should be considered by a trial court when it allocates properties and debts. Those factors include the amount and kind of property to be divided, the source of the property, the parties' health, the parties' standard of living and respective financial conditions, their needs and earning capacities, the duration of the marriage, what the parties gave up by the marriage, and the relationship the property division has with the amount of alimony awarded. Burke v. Burke, supra; Naranjo v. Naranjo, supra. While the findings of fact issued by the court in this case recite that many of these factors were considered, the total result was in fact inequitable, and is an abuse of discretion.

A. Was it an abuse of discretion for the court to award all

property in kind, and not require that the properties be sold and the proceeds split between the parties?

The trial court in this case stated repeatedly that it was difficult to value the assets of the parties. Indeed, it was impossible for the parties to obtain competent appraisals on many of the items of property, real and personal. The only way to obtain an accurate valuation of many of the items was to sell them and then divide the proceeds. However, the defendant did not wish any of the property sold, and the court obliged by distributing all the property in kind.

There were several items which could easily have been sold and the proceeds used to reduce the total debts of the parties, to generate cash for future living expenses, and to produce a source of funds which could be used to repair the properties which were not sold. Given the circumstances of the parties, and especially the cash-poor situation of the plaintiff, it was an abuse of discretion for the court to award all property in kind, without ordering any of the properties to be sold, since the distribution gave plaintiff no assets which could easily be converted to cash.

It is certainly not uncommon for a trial court to order the sale of properties of the marriage; in Gardner v. Gardner, supra, the trial court ordered basically all property to be sold except for household furnishings and

personal property (which were divided), and one personal automobile for each party. The court ordered the parties to sell all other real property, motor vehicles, boats, recreational vehicles, etc.

A similar order in this case would have been more equitable to the parties. Defendant would still have had the option to retain any of the properties, provided he could pay to the plaintiff the reasonable value thereof or meet any sale price. Many items which were awarded to the defendant could have been sold readily and were not needed to continue to operate the farm. In particular, defendant had actually obtained a bid of $10,000.00 for the scrap metal. Defendant has not shown that he needed to maintain the entire amount of scrap metal to operate the farm, and sale of this asset would have generated funds for the parties to use in reducing their other obligations. Ordering sale of excess assets would generate income and also avoid the thorny problem of valuation.

B. Did the Court abuse its discretion when it awarded an oversized portion of the marital property to the defendant, including all assets which could quickly be converted to cash?

The court awarded the following items to the plaintiff: the family home and extra lot, mobile home and half acre lot in Bear River City; one acre building lot sold on contract; all household furnishings at the family home;

savings account at Morton Thiokol Credit union; Chevrolet and Oldsmobile. By the court's own figures, these assets were worth a total of $70,888.00, which together with the $9,000.00 judgment awarded to the plaintiff yields a net to her of $79,888.00 in the property distribution.

Defendant, on the other hand received the following: farm of 302.6 acres; junk and scrap metal; horses and livestock; all other vehicles and machinery. Defendant received by the court's figures, $86,406.00. When the $9,000.00 judgment against him is subtracted, his total from the property distribution is $77,406.00. While the figures appear to slightly favor the plaintiff, consideration of the circumstances of the parties reveals that the distribution is in fact inequitable, although it appears to be equal.

There was considerable dispute considering the value of several of the properties of the parties, as follows:

1. The family home, located on a lot of .82 acres with an adjoining lot of .79 acres, was valued by the court at $30,000.00. Plaintiff's expert witness, Reed Willis, valued the same property at $23,000.00, and indicated that substantial repairs were needed. His estimated cost of repairs was $11,600.00. Mr. Willis' credentials as an appraisor were not challenged; in fact, the court indicated confidence in Mr. Willis's abilities. Defendant's expert,

Troy Miller, valued the home and one lot at $32,000.00. He indicated that the other lot would have a separate value. Mr. Miller has been more active as a real estate broker than an appraisor, and the court indicated at the end of the trial on November 24, that it was not satisfied with the competence of defendant's expert witness. The trial court's valuation of $30,000.00 comports with neither appraisal; nor does it allow any credit to plaintiff for the costs required to repair the home. Despite the evidence of defendant's expert, the more credible evidence showed clearly that the home in its current condition was worth considerably less than $30,000.00.

2. The court valued the farm property at a total of $95,500.00. Defendant valued the property at $250.00 per acre, for a total value of $75,650.00, based solely on evidence of comparable sales next to his parcel. Both defendant's comparable sales were forced sales, where the buyer submitted the highest bid and was accepted. Both sales were for much smaller parcels of property than this farm property. Defendant made no effort to distinguish between different types of property, with different values, when he valued his total property at $250.00 per acre. Plaintiff's expert on the other hand, viewed the property site, reviewed soil records of the property, compared other comparable sales which were true market sales, and concluded

that the value of the 40 tilled and irrigated acres of property was $700.00 per acre; the value of the 262.5 acres of pasture land was $360.00 per acre, for a total value of $122,500.00. Plaintiff's expert then reduced this value by $9,810.00 (the cost to the defendant to purchase water shares. Defendant has the right to use those water shares, and only needs to purchase the water shares if he decides to sell the property.) Even allowing a deduction for the value of the water shares, plaintiff's qualified expert valued the farm property at $112,690.00. The court gave no reason for appraising the property at a different value from the expert; rather, the court appears to have simply split the difference between the value placed on the property by the defendant and the value placed on the property by the plaintiff.

3. The junk metal and scrap metal, including junk cars, inoperable farm equipment, etc., was valued by the court at $10,000.00. This was based solely on defendant's statement that Atlas Steel had made a bid of $10,000.00 for the lot. Plaintiff's expert, however, valued the Thiokol scrap metal and the junk vehicles separately, valuing the cars, trucks, and farm implements at $7,500.00. He did not place a value on the Thiokol scrap metal, other than the original purchase price of the scrap metal as communicated to him by the plaintiff. Plaintiff's records show that

defendant spent in excess of $20,000.00 purchasing scrap metal from Thiokol, and plaintiff believes that none of this scrap metal has been sold. If the court was not going to order that the scrap and junk metal be sold, there was certainly no need to rely solely on one bid to value such property.

4. The household furnishings were assigned a value of $3,000.00. This may represent the replacement value; however, plaintiff's evidence, which was not disputed by the defendant, was that almost all furnishings in the home were in extremely poor condition, would have no resale value, and were of almost no value to the family. While defendant claimed that the household furnishings were worth a total of $5,000.00, he gave no evidence as to the condition of the household furnishings, their resale value, their age, or any other factor relevant to the value of those household furnishings. Plaintiff, on the other hand, was very specific in her assessment that most of the household furnishings were "junk", which she would like to give away. Plaintiff did specify several items which would have some resale value: a washing machine, a refrigerator, and a microwave oven. These items, however, are not worth $3,000.00 all together. There was no evidence to support the court's finding that the household furnishings were worth $3,000.00 resale value. Even valuing the household

furnishings at $1,000.00 would probably have been to high.

The court values on these four items alone have resulting in charging plaintiff with $9,000.00 more than she has actually received, $7,000.00 on the home and $2,000.00 on household furnishings, while crediting defendant with $17,000.00 on the value of the farm, and an unknown amount on the value of the scrap metal. Based on these four items alone, plaintiff has in fact received only $71,000.00, while defendant has received $94,000.00. This is clearly inequitable in light of plaintiff's commitment of her entire adult life to the marriage, to raising the children of the marrige, and to maintaining the properties of the parties.

Further, a review of the exact items distributed to the parties shows that plaintiff has received properties which must be maintained, at net cost to herself, and are not easily converted to cash. Defendant, on the other hand, has received items which, with the exception of the farm property, can be converted to cash at his discretion. Defendant has already obtained one bid for the junk and scrap metal, and can sell that relatively easy. Based on the bid he has already received, he stands to gain in excess of $10,000.00 from the sale of the junk and scrap metal. It costs him nothing to maintain the junk metal until he decides to sell it, it can be sold in lots at different times if he so desires, and can generate funds with which to

liquidate outstanding debts or to provide operating capital for the farm as needed. While the farm property itself probably cannot be readily sold, it does generate some income through pasture rents, grass cuttings, etc. This income helps to offset the farm payments owed by defendant. Defendant also received rights to all horses and livestock. He has in the past sold some of these animals and can continue to do so as he desires, thus obtaining funds which he can apply as he sees fit and at the same time reducing his farm costs. Defendant was also awarded all vehicles and machinery except for the Chevrolet and the Oldsmobile. While some of these vehicles may not be operable, they may be repairable. Use of the vehicles enables defendant to produce income from the farm property, and some of the duplicate vehicles could be sold by defendant at his leisure. Since the market for used farm machinery is better than the market for new farm machinery, defendant may well be able to resell many of these vehicles.

It is clear that the findings of the Court concerning the values of many of the assets of the parties is against the weight of the evidence; accordingly, the case must be reversed and remanded for an entry of property distribution more equitable to the parties.

C. Did the Court abuse its discretion when it allowed defendant two years in which to pay to plaintiff the

offsetting value of the properties?

The trial court awarded plaintiff a $9,000.00 judgment against the defendant, payable at the rate of $4,500.00 within one year and another $4,500.00 payable by the end of the second year. As noted above, defendant has received most of the income producing properties, and most of the properties which can be converted to cash. Plaintiff has no income other than that derived from the defendant. The court-sanctioned delay in payment of the judgment leaves plaintiff with no source of funds for capital expenditures, no cushion of safety for unexpected expenses. Further, she loses some income which could accrue as interest during the course of the year if the judgment were payable at a faster rate. While the defendant does have major expenses, he does have several sources of income: his employment at Morton Thiokol, his income from the farm property, and assets which can be converted, all or part, to cash. He has now paid off the loan on his vehicle. It has not been shown that he cannot pay that judgment in less time than one year, much less two years.

As the Utah Supreme Court noted in Gardner v. Gardner, "the purpose of divorce is to end marriage and allow the parties to make as much of a clean break from each other as is reasonably possible. An award of deferred compensation which ties a couple together long after divorce

can frustrate that objective." 748 P.2d 1076, 1079. While the Court in that case was referring to deferred payment of retirement funds, the same principle obviously applies in this case. As the court noted in the same case, quoting Woodward v. Woodward, "long-term and deferred sharing of financial interests are obviously too susceptible to continued strife and hostility ..." Id. Given the hostility which exists between the parties to this case, a swift conclusion to all financial ties is desirable.

Defendant in this case has not shown that it would work undue hardship on him to satisfy the judgment in less than two years. It may not be convenient for him, and perhaps he does not wish to sell some of the assets he has obtained in the divorce in order to obtain funds for this purpose, but he can maintain his normal lifestyle. Without speedy payment of the judgment, however, or other redistribution of assets, plaintiff is left with minimal cash reserves which will be speedily exhausted in the event of an emergency or in the event that she makes any of the many necessary repairs to the home. Plaintiff also looses the time value of the funds, if invested, and some of the repairs which she needs to make to the home may in fact cost more if the home is allowed to deteriorate for two years before she is able to obtain funds to make such repairs.

Given the cash poor circumstances of the

plaintiff, it was an abuse of discretion for the trial court to grant to the defendant two years in which to pay to plaintiff the offsetting value of the properties. The trial court should be ordered to establish a more reasonable time table for payment of the judgment against defendant, to allow the parties to finally resolve their dispute and get on with their lives.

CONCLUSION

The trial court abused its discretion in the following rulings: when it failed to order defendant to pay all or part of plaintiff's attorney's fees; when it awarded plaintiff only $300.00 per month as and for alimony, and ordered that all alimony would terminate at age 62; and when it distributed all the property of the parties in kind and allowed defendant two years in which to pay to plaintiff the offsetting value of the property distribution. Many of the values assigned to properties of the parties were against the weight of the evidence, resulting in an unequal and inequitable property distribution.

Accordingly, the case should be reversed and remanded to the trial court for a more equitable order concerning the distribution of the assets of the parties, including an order that assets be sold where possible and the proceeds distributed to the parties, and an order that any judgment be paid to plaintiff as speedily as possible.

The amount of alimony should be reconsidered in light of all the factors of Jones v. Jones, supra, both before and after defendant's retirement. Since plaintiff has no liquid assets, defendant should be ordered to pay all or part of her attorney's fees, both from the trial and on this appeal.

RESPECTFULLY SUBMITTED This 12th day of April, 1989.

KELLY G. CARDON
Attorney for Plaintiff/Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of April, 1989, I mailed 4 true and correct copies of the above and foregoing Brief in the U.S. Mail, postage prepaid and addressed to the Attorney for Defendant/Respondent, Ben H. Hadfield, at P.O. Box F, Brigham City, Utah 84302.

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IN THE FIRST DISTRICT COURT, BOX ELDER COUNTY, STATE OF UTAH

MARY MUNNS,	)	
Plaintiff,	)	DEFENDANT'S PROPOSED FINDINGS OF FACT AND
vs.	)	CONCLUSIONS OF LAW.
LOWELL SHELLEY MUNNS,	)	Civil No. 8720 0149
Defendant.	)	

This matter having come before the court for trial on the 24th day of November, 1987 beginning at the hour of 10:00 o'clock a.m. and the plaintiff appearing in person and represented by her counsel of record, Pete N. Vlahos of the firm of Vlahos and Sharp and the defendant appearing in person and represented by his attorney, Ben H. Hadfield of the firm of Mann, Hadfield and Thorne, and the court having heard the testimony of the parties, as well as numerous witnesses called in behalf of each of the parties and having received and reviewed numerous Exhibits and having announced from the bench that a further hearing would be held at the

earliest possible date so as to receive additional evidence limited to the issues of the value of the farm property and the scrap metal and the court having previously announced its decision to bifurcate this trial so as to issue a decision and decree on all matters except the property division and debts, the court now enters the following Findings of Fact and Conclusions of Law constituting the findings and decision of this court:

FINDINGS OF FACT:

1. The plaintiff and the defendant were married one to the other on June 2, 1950 at Logan, Utah and have been residents of Box Elder County, Utah for at least three months prior to the filing of the Complaint herein.

2. Twelve children have been born as issue of the marriage, eleven of which are living. Two of said children, Sharla Munns born May 14, 1972 and Sheldon Munns born September 20, 1975 are minors.

3. Irreconcilable differences exist between the parties.

4. The defendant is employed full-time at Morton-Thiokol earning an hourly wage of $13.90 per hour. The plaintiff has not worked outside of the home during the marriage, but is capable of employment and has recently worked part-time for the School District at approximately $3.50 per hour. Based upon the defendant's income the

Uniform Child Support Schedule indicates child support should be in the amount of $197.00 per month per child.

5. The defendant is currently providing health and accident insurance to the plaintiff and minor children through his employment and additionally, has life insurance on his life naming the minor children of the parties as beneficiaries.

6. The defendant has accumulated approximately 14 years credit in the Morton-Thiokol, Inc. Pension Plan, which credit was accrued during the course of the marriage.

7. Each of the parties has received some inheritance during the course of the marriage, which inheritances appear to have been either expended or so comingled with other marital assets as to be unidentifiable.

8. The plaintiff has incurred attorney's fees of approximately $1,700.00 and the defendant has incurred attorney's fees in excess of $2,000.00 in settlement negotiations, discovery, trial preparation and the trial of this action. A portion of the plaintiff's attorney's fees was paid from joint funds accrued during the marriage.

9. The parties have acquired numerous items of real and personal property as well as numerous debts. A decision allocating property and debts shall be postponed until receipt of further evidence concerning valuation of the farm property and scrap metal.

10. During the course of the marriage the parties have acquired an unrecorded interest in a one acre parcel located in Elwood, Utah. The parties have secured a purchaser for this property for the sum of approximately $11,000.00, and the parties have agreed that each of them should receive one-half of the proceeds from said sale after deduction of closing costs.

AS CONCLUSIONS OF LAW FROM THE FOREGOING THE COURT CONCLUDES:

CONCLUSIONS OF LAW:

1. Each of the parties is entitled to a divorce from the other upon the grounds of irreconcilable differences, said Decree to become final and absolute upon signing by the court.

2. Custody of the minor children of the parties, Sharla Munns born May 14, 1972 and Sheldon Munns, born September 20, 1975 should be awarded to the plaintiff subject to reasonable rights of visitation by the defendant at reasonable times and upon reasonable notice.

3. The defendant should pay child support to the plaintiff in the amount of $197.00 per month per child due and payable on the 1st day of each month commencing with the month following the signing of the Decree.

4. The defendant shall provide medical and health insurance on the minor children of the parties so long as such insurance is available to him through his place of

employment. Each of the parties shall be responsible for one-half of any amounts not paid by the health insurance. In addition, the defendant shall be obligated to cooperate fully in assisting the plaintiff in obtaining continued health insurance coverage on herself pursuant to the Federal "COBRA" Statute.

5. The defendant is ordered to maintain in effect the amount of life insurance provided by his employer as a fringe benefit, and to name the minor children of the parties as the beneficiaries of said insurance until such time as all children of the parties have obtained majority.

6. The defendant shall pay to the plaintiff as and for alimony or separate maintenance payments the sum of $200.00 per month commencing on the 15th day of the month following entry of the Decree and due and payable on the 15th day of each month thereafter. The defendant's obligation to pay under this paragraph will end and he will be released from the obligation of payment, after the death of either party. Said obligation shall likewise terminate upon the remarriage of plaintiff or her cohabitation with a member of the opposite sex. Said obligations shall in any event terminate upon the plaintiff's 62nd birthday and her eligibility to begin receiving Social Security payments. All payments made by the defendant under this paragraph shall be made in cash.

7. The plaintiff is awarded a one-half interest in all retirement benefits accrued in the name of the defendant in

the Morton-Thiokol, Inc. Pension Plan up to the date of November 24, 1987. Said interest shall be in accordance with the Woodward formula and the requirements of federal regulations governing pension plans. A separate "Qualified Domestic Relations Order" shall be prepared by plaintiff's counsel in conformance with federal requirements and "approved as to form" by defendant's counsel prior to signing by this court.

8. Each of the parties shall pay their own attorney's fees and court costs incurred herein.

9. Neither of the parties shall receive any separate allocation or award of property based upon inheritances claimed to have been received during the course of the marriage.

10. The unrecorded interest in one acre located in Elwood, Utah may be sold pursuant to the stipulation of the parties, each party to receive one-half of the remaining proceeds after deduction of closing costs.

11. The issues concerning division of real and personal property and allocation of responsibility for debts are reserved for additional evidence and further decision by this court. Until said further Order, the provisions concerning property and debts contained in the Temporary Order issued by the court in October, 1986 shall remain in effect.

12. The Decree of Divorce should become final upon signing and entry.

DATED this _____ day of _____, 1987.

GORDON J. LOW
DISTRICT JUDGE

ADDENDUM C

Ben H. Hadfield of Mann, Hadfield & Thorne #1288
Attorneys for Defendant
Zions Bank Building - 98 North Main
P. O. Box "F"
Brigham City, Utah 84302-0906
Telephone: 723-3404

IN THE FIRST DISTRICT COURT, BOX ELDER COUNTY, STATE OF UTAH

MARY MUNNS,)

Plaintiff,) DEFENDANT'S PROPOSED DECREE OF DIVORCE

vs.)

LOWELL SHELLEY MUNNS,) Civil No. 372000149

Defendant.)

This matter having come before the court for trial on the 24th day of November, 1987 beginning at the hour of 10:00 o'clock a.m. and the plaintiff appearing in person and represented by her counsel of record, Pete N. Vlahos of the firm of Vlahos and Sharp and the defendant appearing in person and represented by his attorney, Ben H. Hadfield of the firm of Mann, Hadfield and Thorne, and the court having heard the testimony of the parties, as well as numerous witnesses called in behalf of each of the parties and having received and reviewed numerous Exhibits and having announced from the bench that a further hearing would be held at the

earliest possible date so as to receive additional evidence limited to the issues of the value of the farm property and the scrap metal and the court having previously announced its decision to bifurcate this trial so as to issue a decision and decree on all matters except the property division and debts, and the court having entered its Findings of Fact and Conclusions of Law and being fully familiar in the premises, now makes the following Order.

IT IS HEREBY,

ORDERED, ADJUDGED AND DECREED:

1. Each of the parties is granted a divorce from the other upon the grounds of irreconcilable differences, said Decree to become final and absolute upon signing by the court.

2. Custody of the minor children of the parties, Sharla Munns born May 14, 1972 and Sheldon Munns, born September 20, 1975 is awarded to the plaintiff subject to reasonable rights of visitation by the defendant at reasonable times and upon reasonable notice.

3. The defendant shall pay child support to the plaintiff in the amount of $197.00 per month per child due and payable on the 1st day of each month commencing with the month following the signing of the Decree.

4. The defendant shall provide medical and health insurance on the minor children of the parties so long as such insurance is available to him through his place of

employment. Each of the parties shall be responsible for one-half of any amounts not paid by the health insurance. In addition, the defendant shall be obligated to cooperate fully in assisting the plaintiff in obtaining continued health insurance coverage on herself pursuant to the Federal "COBRA" Statute.

5. The defendant is ordered to maintain in effect the amount of life insurance provided by his employer as a fringe benefit, and to name the minor children of the parties as the beneficiaries of said insurance until such time as all children of the parties have obtained majority.

6. The defendant shall pay to the plaintiff as and for alimony or separate maintenance payments the sum of $200.00 per month commencing on the 15th day of the month following entry of the Decree and due and payable on the 15th day of each month thereafter. The defendant's obligation to pay under this paragraph will end and he will be released from the obligation of payment, after the death of either party. Said obligation shall likewise terminate upon the remarriage of plaintiff or her cohabitation with a member of the opposite sex. Said obligations shall in any event terminate upon the plaintiff's 62nd birthday and her eligibility to begin receiving Social Security payments. All payments made by the defendant under this paragraph shall be made in cash.

7. The plaintiff is awarded a one-half interest in all retirement benefits accrued in the name of the defendant in

the Morton-Thiokol, Inc. Pension Plan up to the date of November 24, 1987. Said interest shall be in accordance with the Woodward formula and the requirements of federal regulations governing pension plans. A separate "Qualified Domestic Relations Order" shall be prepared by plaintiff's counsel in conformance with federal requirements and "approved as to form" by defendant's counsel prior to signing by this court.

8. Each of the parties shall pay their own attorney's fees and court costs incurred herein.

9. Neither of the parties shall receive any separate allocation or award of property based upon inheritances claimed to have been received during the course of the marriage.

10. The unrecorded interest in one acre located in Elwood, Utah may be sold pursuant to the stipulation of the parties, each party to receive one-half of the remaining proceeds after deduction of closing costs.

11. The issues concerning division of real and personal property and allocation of responsibility for debts are reserved for additional evidence and further decision by this court. Until said further Order, the provisions concerning property and debts contained in the Temporary Order issued by the court in October, 1986 shall remain in effect.

12. The Decree of Divorce shall be and is final upon signing and entry.

DATED this 11 day of January, 1988.

GORDON J. LOW
DISTRICT JUDGE

ADDENDUM D

IN THE FIRST JUDICIAL DISTRICT COURT, COUNTY OF BOX ELDER
STATE OF UTAH

MARY MUNNS, Plaintiff	)	MEMORANDUM DECISION
v.	)	
LOWELL SHELBY MUNNS, Defendant	)	Civil No. 872020149
	)	

This matter came on for trial before the Court on the 24th day of November 1987. The plaintiff did not rest and the matter was continued only for the purpose of obtaining further appraisals on the personal property (variously described as "junk") and upon the farm property.

The parties were further instructed to present proposed Findings of Fact. On January 11, 1988, the plaintiff filed with the Court his proposed Findings of Fact, Conclusions of Law, and Decree. The plaintiff filed an objection thereto to which the defendant responded. The matter was back in Court on the 7th day of June for the taking of testimony and receipt of witnesses as to the values of the farm and personal property.

With respect to the Proposed Findings and Decree which the Court signed the 11th day of January, 1988, the plaintiff's objections are overruled and as to the alimony provision, the same is allowed to stand as the Court's decision. In that regard, the provision thereof fully reflects the Court's conclusions based upon the testimony and witnesses with the exception of the alimony provision. The Court finds that the defendant has an income,

without overtime, of $24,029.40 per month. In light of the debts, the duration of the payments, the duration of the marriage, the plaintiff's lack of work experience and employment skills, recognizing the ages of the children, the eventual receipt of social security and retirement benefits, together with income realized from the properties, the alimony is set at $300.00 per month rather than $200.00 per month as previously ordered.

With regard to the property, the Court finds the following values:

Family Home (1.7 acres)	$30,000.00	
less mortgage	- $ 3,162.00	$26,388.00
Mobil Home and Lot		$26,000.00
Building Lot		$11,000.00
Farm	$95,500.00	
less mortgage	- $46,953.00	$48,547.00
Vehicles and Machinery	$10,844.52	
less loans	- $ 796.41	$23,859.00
Junk and Scrap Metal		$10,000.00
Household Furnishings		$ 3,000.00
Horses and Livestock		$ 4,000.00
Savings		$ 3,200.00
Chevrolet and Oldsmobile		$ 850.00

THE DEBTS ARE AS FOLLOWS:

Vehicles	$10,844.52
Bronco	$ 796.41
Farm Loans	$46,953.56
Mortgage (home)	$ 3,612.35

The property is divided as follows:

TO THE PLAINTIFF

Family Home (subject to mortgage)
Mobil Home and Lot
Building Lot
Chevrolet and Oldsmobile
Household furnishings
Savings Account

TO THE DEFENDANT

Farm Property (subject to mortgage)
Vehicles and Machinery (subject to the debts)
Bronco (subject to the debt)
Junk and Scrap
Horses and Livestock

In order to equalize the distribution between the parties, the plaintiff is granted a judgment against the defendant in the sum of $9,000.00 execution stayed thereon pending payment of $4,500.00 within

twelve months of this date and the balance of $4,500.00 to be paid within twelve months thereafter together with interest thereon at the judgment rate. Debts and obligations identified above are to be assumed by the defendant with the exception of the mortgage on the home which is to be the responsibility of the plaintiff. Each party to bear its own costs and fees.

Counsel for plaintiff to prepare formal Decree and Findings.

Dated this 11th day of July, 1988.

BY THE COURT:

Gordon J. Low
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of August, 1988, I m-iled, postage prepaid, a true and correct copy of the foregoing Memorandum Decision to Pete N. Vlahos, Attorney for Plaintiff at the Legal Forum Building, 2447 Kiesel Avenue, Ogden, Utah 84401 and to Ben H. Hadfield, Attorney for Defendant, at Zions Bank Building, 98 North Main, P.O. Box F, Brigham City, Utah 84302.

Sharon S. Lindsey

Senior Court Clerk

ADDENDUM E

PETE N. VLAHOS, #3337
VLAHOS, SHARP, WIGHT & WALPOLE
Attorney for Plaintiff
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
Telephone: (801) 621-2464

IN THE DISTRICT COURT OF BOX ELDER COUNTY

STATE OF UTAH

MARY MUNNS, Plaintiff, vs. LOWELL SHELLEY MUNNS, Defendant.	)	FINAL FINDINGS OF FACT AND CONCLUSIONS OF LAW CIVIL NO: 8720020149

ATTORNEYS AT LAW
LEGAL FORUM BUILDING
2447 KIESEL AVENUE
OGDEN, UTAH 84401

This matter having come on regularly for trial on the 24th day of November, 1987, before the Honorable Gordon J. Low, one of the Judges in the above-entitled Court, sitting without a jury, and Plaintiff not having rested his case for purposes of ascertaining the value of certain real property, and the matter having been continued until June 7, 1988, before the Honorable Gordon J. Low, for purposes of obtaining further appraisals on personal property variously described as "junk", and upon the farm property, and the Court having further instructed the parties to present Proposed Findings of Fact, and the Defendant having

presented Proposed Findings of Fact on January 11, 1988, along with Conclusions of Law and Decree of Divorce, and the Plaintiff having filed an Objection thereto which the Court responded to, and the matter having gone back to trial on June 7, 1988, for the purposes of taking testimony, receipt of witnesses as to the value of the farm property and personal property, and each of the parties having testified in both trials, witnesses having been called, exhibits having been offered and received, and the Court being fully cognizant of all matters pertaining therein, enters the following:

FINDINGS OF FACT

1. That the Court finds that with respect to the Proposed Findings of Fact and Conclusions of Law which the Court signed the 11th of January, 1988, that the Plaintiff's objections are overruled and as to the alimony provision, the same is allowed to stand as the Court's decision.

2. In that regard the provision thereof fully reflects the Court's conclusion based on the testimony and witnesses with the exception of the alimony provision.

3. That the Proposed Findings of Fact are herein restated as previously signed with the modifications that the Court finds herein.

4. That Plaintiff and Defendant were married, one to the other, on June 2, 1950, at Logan, Utah, and have been residents of Box Elder County, Utah for at least three (3) months prior to the filing of the Complaint.

5. That twelve (12) children have been born as issue of the marriage, eleven (11) of which are living. Two (2) of said children, Sharla Munns, born May 14, 1972, and Sheldon Munns, born September 20, 1975, are minors.

6. That Defendant is employed full-time at Morton Thiokol earning an hourly wage of $13.90 per hour. That Plaintiff has not worked outside the home during the marriage but is capable of employment and has recently worked part-time for the school district at approximately $3.50 per hour. Based upon the Defendant's income, the Uniform Child Support Schedule indicates child support should be in the amount of $197.00 per month per child.

7. That Defendant is currently providing health and accident insurance for the Plaintiff and minor children through his employment and additionally has life insurance on his own life naming the minor children of the parties as beneficiaries.

8. That the Defendant has accumulated approximately 14 years credit in the Morton Thiokol, Inc., Pension Plan, which credit was accrued during the course of the marriage.

ATTORNEYS AT LAW
LEGAL FOUNDATION OF
2147 WEST AVENUE
OGDEN, UTAH 84401

9. That each of the parties have received some inheritance during the course of the marriage and each inheritance appears to have been expended or so co-mingled with other marital assets to be unidentifiable.

10. That the Plaintiff has incurred attorney fees of approximately $1,700.00, and the Defendant has incurred attorney fees in excess of $2,000.00 in settlement negotiations, discovery, trial preparation and the trial of this action. A portion of the Plaintiff's attorney's fees was paid from joint funds accrued during the marriage.

11. That during the course of the marriage, the parties have acquired numerous items of real and personal property as well as numerous debts.

12. That the Court in its Memorandum Decision finds the following to be the value of the various assets acquired by the parties and is set forth as follows, to-wit:

(a) Family home plus 1.7 acres having a value of $30,000.00 with a mortgage of $3,162.00, having a net equity of $26,388.00.

(b) Mobile home and lot - $26,000.00.

(c) Building lot - $11,000.00.

(d) Farm valued at $95,500.00, less the mortgage of $46,953.00, having a net equity of $48,547.00.

(e) Vehicles and machinery less loans - $23,859.00.

(f) Junk and scrap metal - $10,000.00.

(g) Household furnishings - $3,000.00.

(h) Horses and livestock - $4,000.00.

(i) Savings account - $3,200.00.

(j) Chevrolet and Oldsmobile - $850.00.

13. That during the course of the marriage, the parties have incurred debts, to-wit: Mortgage on the vehicles - $10,844.52; $796.41 due on the Bronco; $46,953.56 due on the mortgages on the farm; and $3,612.35 due and owing on the mortgage on the family home.

14. That the Court finds that in light of the debts, the duration of payment, the duration of the marriage, Plaintiff's lack of work experience and employment skills, recognizing the ages of the children, the eventual receipt of social security and retirement benefits together with income realized from the properties, the Court finds a reasonable sum for alimony is $300.00.

15. That from the above and foregoing Findings of Fact, the Court arrives at the following:

CONCLUSIONS OF LAW

1. That the Plaintiff, Mary Munns, is entitled to a Decree of Divorce from the Defendant, Lowell Shelby Munns, and the Defendant, Lowell Shelby Munns, is entitled to a Decree of Divorce from the Plaintiff, Mary Munns, said

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OGDEN, UTAH 84401

divorce to become absolute upon the prior signing and entry of the Decree which was January 11, 1988.

2. That Plaintiff is awarded the care, custody and control of the two (2) minor children, to-wit: Sharla Munns, born May 14, 1972, and Sheldon Munns, born September 20, 1975, subject to the Defendant's right to visit at all reasonable times and places.

3. That Defendant should pay to the Plaintiff the sum of $197.00 per month per child as and for support, said payments are due and payable on the 1st of each month commencing with the month of February, 1988.

4. That the Defendant shall maintain health and accident insurance on the minor children of the parties so long as such insurance is available to him through his place of employment, provided however, that each of the parties shall be responsible for one-half of any amounts not paid by the health insurance. In addition, the Defendant shall be obligated to cooperate fully in assisting the Plaintiff in obtaining continued health insurance coverage on herself pursuant to the Federal COBRA statute and also the State legislation.

5. That the Defendant is ordered to maintain in effect the amount of life insurance provided by his employer as a fringe benefit and to name the minor children of the

parties as the beneficiaries of said insurance until such time as all children of the parties have obtained majority.

6. That the Defendant shall pay to the Plaintiff the sum of $300.00 a month as and for alimony commencing on the 15th day of August, 1988, and is due and payable on the 15th day of each month thereafter.

7. The Defendant's obligation to pay alimony under this paragraph will end and he will be released from the obligation of payment after the death of either party. Said obligation shall likewise terminate upon the remarriage of the Plaintiff or her cohabitation with a member of the opposite sex. Said obligation in any event shall terminate upon the Plaintiff's 62nd birthday and her eligibility to begin receiving Social Security payments. All payments made by the Defendant under this paragraph shall be made in cash.

8. The Plaintiff is awarded one-half interest in all retirement benefits accrued in the name of the Defendant in the Morton Thiokol, Inc., Pension Plan, up to the date of November 124, 1987, which the Court finds to be 14 years of marriage while the Defendant was employed at Thiokol. Said interest shall be in accordance with the Woodward formula and the requirements of Federal regulations governing pension plans. A separate "Qualified Domestic Relations Order"

Order" shall be prepared by Plaintiff's counsel in conformance with Federal requirements and "approved as to form" by Defendant's counsel prior to signing by this Court.

9. That neither of the parties shall receive any separate allocation or award of property based upon inheritances claimed to have been received during the course of the marriage.

10. That the Plaintiff should be awarded the family home, subject to the mortgage, the mobile home and lot, the building lot, Chevrolet and Oldsmobile, household furnishings, savings accounts, and $9,000.00 to be paid by the Defendant to the Plaintiff to equalize the distribution of the assets.

11. That the Defendant shall receive the farm property, subject to the mortgage, the vehicles and machinery subject to the debts, the Bronco subject to the debt, junk and scrap, horses and livestock, and the Defendant shall be required to pay to the Plaintiff the sum of $9,000.00 as hereinafter set forth.

12. That the Plaintiff is granted a judgment against the Defendant in the sum of $9,000.00, execution stayed thereon pending payment of $4,500.00 within twelve (12) months of this date, which is August 1, 1988, and the balance of $4,500.00 is to be paid within twelve (12) months

thereafter, together with interest thereon at the judgment rate of 12%.

13. That the Defendant is to assume and discharge the debts and obligations identified above with the exception of the mortgage on the family home, which shall be paid for by the Plaintiff.

14. That each of the parties shall assume and pay their own attorney fees and costs.

DATED this _____ day of ~~August~~ June, 1988.

BY THE COURT:

HONORABLE GORDON J. LOW
District Court Judge

ATTORNEYS AT LAW
LEGAL FORUM BUILDING
2447 KIESEL AVENUE
OGDEN, UTAH 84401

APPROVED AS TO FORM:

BEN H. HADFIELD
Attorney for Defendant

ADDENDUM F

PETE N. VLAHOS, #3337
VLAHOS, SHARP, WIGHT & WALPOLE
Attorney for Plaintiff
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
Telephone: (801) 621-2464

IN THE DISTRICT COURT OF BOX ELDER COUNTY

STATE OF UTAH

MARY MUNNS, Plaintiff, vs. LOWELL SHELLEY MUNNS, DOB: 8/9/28 SSN: 528-32-0689 Defendant.	)	ABSOLUTE DECREE OF DIVORCE CIVIL NO: 872020149

This matter having come on regularly for trial on the 24th day of November, 1987, before the Honorable Gordon J. Low, one of the Judges in the above-entitled Court, sitting without a jury, and Plaintiff not having rested his case for purposes of ascertaining the value of certain real property, and the matter having been continued until June 7, 1988, before the Honorable Gordon J. Low, for purposes of obtaining further appraisals on personal property variously described as "junk", and upon the farm property, and the Court having further instructed the parties to present

872020149-89

Proposed Findings of Fact, and the Defendant having presented Proposed Findings of Fact on January 11, 1988, along with Conclusions of Law and Decree of Divorce, and the Plaintiff having filed an Objection thereto which the Court responded to, and the matter having gone back to trial on June 7, 1988, for the purposes of taking testimony, receipt of witnesses as to the value of the farm property and personal property, and each of the parties having testified in both trials, witnesses having been called, exhibits having been offered and received, and the Court being fully cognizant of all matters pertaining thereto, and the Court having made its Findings of Fact and Conclusions of Law, separately stated in writing.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff, Mary Munns, is hereby granted a Decree of Divorce from the Defendant, Lowell Shelly Munns, and the Defendant, Lowell Shelly Munns, is hereby granted a Decree of Divorce from the Plaintiff, Mary Munns, said divorce to become absolute upon the prior signing and entry of the Decree which was January 11, 1988.

It is further ORDERED, ADJUDGED AND DECREED as follows:

1. That Plaintiff is awarded the care, custody and control of the two (2) minor children, to-wit: Sharla Munns, born May 14, 1972, and Sheldon Munns, born September 20, 1975, subject to the Defendant's right to visit at all reasonable times and places.

2. That Defendant is ordered to pay to the Plaintiff the sum of $197.00 per month per child as and for support, said payments are due and payable on the 1st of each month commencing with the month of February, 1983.

3. That the Defendant is ordered to maintain health and accident insurance on the minor children of the parties so long as such insurance is available to him through his place of employment, provided however, that each of the parties shall be responsible for one-half of any amounts not paid by the health insurance. In addition, the Defendant is ordered to cooperate fully in assisting the Plaintiff in obtaining continued health insurance coverage on herself pursuant to the Federal COBRA statute and also the State legislation.

4. That the Defendant is ordered to maintain in effect the amount of life insurance provided by his employer as a fringe benefit and to name the minor children of the parties as the beneficiaries of said insurance until such time as all children of the parties have obtained majority.

5. That the Defendant is ordered to pay to the Plaintiff the sum of $300.00 a month as and for alimony commencing on the 15th day of August, 1988, and is due and payable on the 15th day of each month thereafter.

6. The Defendant's obligation to pay alimony under this paragraph will end and he will be released from the obligation of payment after the death of either party. Said obligation in any event shall terminate upon the Plaintiff's 62nd birthday and her eligibility to begin receiving Social Security payments. All payments made by the Defendant under this paragraph shall be made in cash.

7. The Plaintiff is awarded a one-half interest in all retirement benefits accrued in the name of the Defendant in the Morton Thiokol, Inc. Pension Plan, up to the date of November 24, 1987, which the Court finds to be 14 years of marriage while the Defendant was employed at Thiokol. Said interest shall be in accordance with the Woodward formula and the requirements of Federal regulations governing pension plans. A separate "Qualified Domestic Relations Order" shall be prepared by Plaintiff's counsel in conformance with Federal requirements and "approved as to form" by Defendant's counsel prior to signing by this Court.

8. That neither of the parties shall receive any separate allocation or award of property based upon inheritances claimed to have been received during the course of the marriage.

9. That the Plaintiff is hereby awarded the family home, subject to the mortgage, the mobile home and lot, the building lot, Chevrolet and Oldsmobile, household furnishings, savings account, and $9,000.00 to be paid by the Defendant to the Plaintiff to equalize the distribution of the assets as set forth in Paragraph 11.

10. That the Defendant shall receive the farm property, subject to the mortgage, the vehicles and machinery subject to the debts, the Bronco subject to the debt, junk and scrap, horses and livestock, and the Defendant shall be required to pay to the Plaintiff the sum of $9,000.00 as hereinafter set forth.

11. That the Plaintiff is granted a judgment against the Defendant in the sum of $9,000.00, execution stayed thereon pending payment of $4,500.00 within twelve (12) months of this date, which is August 1, 198, and the balance of $4,500.00 is to be paid within twelve (12) months

thereafter, together with interest thereon at the judgment rate of 12%.

12. That the Defendant is ordered to assume and discharge the debts and obligations identified above with the exception of the mortgage on the family home, which shall be paid for by the Plaintiff.

13. That each of the parties shall assume and pay their own attorney fees and costs.

DATED this ____ day of ~~August~~ Sept, 1988.

BY THE COURT:

HONORABLE GORDON J. LOW
District Court Judge

APPROVED AS TO FORM:

BEN H. HADFIELD
Attorney for Defendant

ADDENDUM A

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES ORDINANACES, AND RULES

Utah Code Annotated Section 30-3-5(1) "When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, and parties. The Court shall include the following in every decree of divorce:

a. An order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

b. if coverage is available at a reasonable cost, an order requiring the purchase and maintanence of appropriate health, hospital and dental care insurance for the dependent children."

Utah Code Annotated Section 78-2a-3(2)(h).

(2) "The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over; ..."

(h) appeals from District Court involving domestic relations cases, including but not limited to divorce, annulment, property division, child custody, support, visitation, adoption, and paternity ..."

ADDENDUM G

LAW OFFICES

KELLY G. CARDON & ASSOCIATES

427 27TH STREET
OGDEN, UTAH 84401

801-627-1110

KELLY G. CARDON
JUDY DAWN BARKING

December 12, 1988

Ben Hadfield, Esq.
Mann, Hadfield and Thorne
Zions Bank Building
98 North Main
P.O. Box F
Brigham City, Utah 84302-0906

Re: Munns vs Munns

Dear Ben:

This letter is to advise you that Mrs. Munns has a buyer for the Bear River property at a price of $15,900.00. Because of the status of the appeal and the property therefore being in limbo, I feel it is necessary that we receive your consent to the sale of the property. According to the agent and my client the property is quite run down and the price being offered is a fair price for the property. In any event, if you do not wish to agree to the sale of the property at this price please get something back to me in writing indicating so. Thank you for your cooperation.

Very sincerely,

Kelly G. Cardon
Attorney at Law

KGC:mjp

DEPARTMENT OF HEALTH AND HUMAN SERVICES
SOCIAL SECURITY ADMINISTRATION

ADDENDUM H

REPORT OF CONFIDENTIAL SOCIAL SECURITY BENEFIT INFORMATION

Information about a person's Social Security Benefits is confidential by law. Except under certain circumstances specified by law and regulations, the Social Security Administration does not reveal such information to any person except the beneficiary involved, or his or her authorized representative.

Beneficiary's name and address	SOCIAL SECURITY CLAIM NUMBER	BIC
Mary Munns 5000 W 9600 N Tremonton UT 84337	528 32 0689	B

1. Name of person or agency from whom a request for benefit information was received.
   - [X] Beneficiary
   - [ ] Other *(Show name and address)*

The person or agency named in item (1) above has requested information about your benefits. The information requested has been provided in the items checked (√) below, and is being sent to you for your convenience. If you want the requesting agency (other than yourself) to have this information, you may show or send them this official report.

2. [ ]	The gross amount of your monthly Social Security benefit is		$
	The amount deducted for Medicare is		$
	The net amount of your Social Security check each month is		$
3. [ ]	The above amount became effective		Month–Year
4. [ ]	Your monthly benefit (before deduction for Medicare)	From (month–year) / Through (month–year)	$
5. [ ]	The monthly amount of your Supplemental Security Income payment is		$
6. [ ]	The above amount became effective		Month–Year
7. [ ]	The total monthly amount of your Social Security benefit and supplemental security income payment is		$
8. [ ]	According to our records your date of birth is		Month–Day–Year

9. [ ] We are unable, at this time, to tell you whether benefits may be payable in your case, because the processing of your claim for disability benefits has not been completed. If it is determined that benefits are payable, you will receive notification of the exact amount and effective date.

10. [X] Other At the age of 62, you will be able to receive $204.00 a month as a wife's social security benefit on L Shelly Munns record.

SS DISTRICT OFFICE ADDRESS	SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL
SOCIAL SECURITY OFFICE	Sandy Hunter